

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 91 of 2024**Monday, this the 10th day of March, 2025**“Hon’ble Mr. Justice Anil Kumar, Member (J)**
Hon’ble Maj. Gen. Sanjay Singh, Member (A)”

Dfr Ajay Kumar (Retd.) (Army No. 15471408H) C/o Village and Post Office – Pila Khana, Tehsil – Anup Sahr, District – Bulandsahar, Uttar Pradesh-202393.

..... ApplicantCounsel for the : **Shri Dhiraj Kumar**, Advocate
Applicant **Shri Tatsar Shukla**, Advocate
Shri Rahul Pal, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, Room No. 101 A, South Block, DHQ PO, New Delhi, Pin-110011.
2. Chief of the Army Staff, IHQ of Ministry of Defence (Army), DHQ Post Office, New Delhi-110011.
3. OIC Records, Armoured Corps, Records.
4. The PCDA (P), Draupadi Ghat, Prayagraj, Uttar Pradesh, Pin-211012.

.....RespondentsCounsel for the : **Shri Adesh Kumar Gupta**, Advocate
Respondents. Central Govt. Standing Counsel

ORDER

“Per Hon’ble Mr. Justice Anil Kumar, Member (J)”

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (a) *To direct the respondents to grant the disability pension 52% and not 46.8% which makes the applicant entitled for disability pension to be rounded off to 75% along with arrears & interest @10% p.a. from the date of discharge, by treating disease as attributable to and aggravated by military service with all consequential benefits, in view of the Hon’ble Apex Court Judgment in Rajbir Singh (Supra) and Dharamvir Singh (Supra), or*
- (b) *To pass such orders, direction/directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.*

2. Facts giving rise to Original Application in brief are that applicant was enrolled in the Armoured Corps of Indian Army on 30.06.1997 and discharged from service on 30.06.2021 in low medical category under Rule 13(3) Item III (i) of Army Rules, 1954 after rendering 24 years and 01 day of qualifying service. The applicant is in receipt of Service Pension. The applicant was granted leave from 03.09.2013 to 28.09.2023 and staying in Station Quarter. During the aforesaid leave, on 19.09.1993 applicant sustained injury while he was going to Regimental Wet Canteen to purchase items, in front of the canteen he slipped in the drain, which after investigation was found to be a case of **“NEGLECTED LIS FRANC’S DISLOCATION LEFT FOOT”**. A Court of Inquiry was convened for the aforesaid injury which

opined the injury as not attributable to service. Before discharge from service, the Release Medical Board (RMB) held at 174 Military Hospital on 07.03.2022 assessed his disabilities (i) **'OBESITY (E 66.0)' @5%**, (ii) **'PRIMARY HYPERTENSION (I 10.0)' @30% AND (iii) 'NEGLECTED LIS FRANC'S FRACTURE DISLOCATION LT (S93.2)' @20%**, composite disabilities 46.8% for life and opined the disabilities to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability element of disability pension was rejected vide letter dated 02.07.2022. The applicant preferred First Appeal dated 10.07.2023 which too was rejected vide letter dated 08.01.2024 which was communicated to the applicant vide letter dated 27.01.2024. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned counsel for the applicant submitted that applicant that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The diseases/injury of the applicant were contracted during the service, hence they are attributable to and aggravated by Military Service. He further submitted that the applicant was on Leave which is to be treated on duty when he sustained injury, which ultimately resulted third disability. The respondents have wrongly assessed the injury of the applicant. They have not proved how he was negligent. He was not under influence of anything which

could make him negligent. No prudent person will intentionally try to sustain injury. Due to the aforesaid injury, the mobility of the applicant was affected and led him to gain weight which was not under his control. Still the applicant performed all his duties with dedication and did not fail in duty which was assigned to him. He further submitted that various Benches of AFT, Hon'ble High Courts and the Hon'ble Apex Court, in the matter of disability, have held that if an armed forces personnel suffers with disability during the course of service, which was never reported earlier when he/she was enrolled/recruited in the army, the said disability would be treated to be attributable to or aggravated by military service and he/she shall be entitled to the disability pension for the same. Thus, he submitted that applicant's case being fully covered with above, as he also suffered disabilities during service and same being not reported earlier at the time of his enrolment, he is entitled to disability pension and it's rounding off to @75%.

4. Per contra, learned counsel for the respondents submitted that the applicant's composite disabilities @46.8% for life have regarded as NANA by the RMB, hence, as per Regulation 53(a) of the Pension Regulations for the Army, 2008 (Part-I) which provides that *"An individual released/retired/ discharged on completion of terms of engagement or on completion of service limits or on attaining the prescribed age (irrespective of his period of engagement), if found suffering from a disability attributable to or aggravated by military*

service and so recorded by Release Medical Board, may be granted disability element in addition to service pension or service gratuity from the date of retirement/discharge, if the accepted degree of disability is assessed at 20% or more” the applicant is not entitled for the grant of disability element of disability pension. He further submitted that the applicant was granted Casual Leave from 03.09.2013 to 28.09.2013. The applicant during the aforesaid leave, on 19.09.1993 sustained injury while he was going to Regimental Wet Canteen to purchase items he slipped in the drain, which after investigation was found to be a case of **“NEGLECTED LIS FRANC’S DISLOCATION LEFT FOOT”** i.e. third disability. For grant of the disability element of disability pension it is not only required that armed forces personnel should be on duty, but there must be some causal connection also between the injury and military service. He further submitted that unless injury sustained has causal connection with military service, armed forces personnel cannot be allowed disability element of disability pension merely on the reason of being on duty or disability was not reported/detected while being enrolled or commissioned. He further submitted that in the given facts, applicant being injured while he was going to Regimental Wet Canteen to purchase items, there was no causal connection between the injury sustained/third disability and military service and, therefore, applicant is not entitled to disability element of disability pension for the third disability, as he is claiming. In support, learned counsel for the respondents has placed reliance on the following case laws of the Hon’ble Apex Court:-

(a) ***Renu Devi v Union of India and others***, Decided on July 03. 2019 in Special Appeal arising out of Diary No. C-37356 of 2017.

(b) ***Vijay Kumar v. Union of India***, 2016 SCC 460.

(c) The ***Secretary Govt of India & Others v. Dharamvir Singh*** Decided on 20, September 2019 in Civil Appeal No 4981 of 2012.

5. Ld. Counsel for the respondents further contended that even at the time of discharge the applicant was obese and it is a documented fact that being over-weight is independent modifiable risk factor for contracting Primary Hypertension. Lack of exercise, sedentary lifestyle and dietary indiscretion contribute towards and individual being overweight. He submitted that certain disease like Primary Hypertension is primarily due to interplay of metabolic and life style factors and manifest later in life irrespective of service conditions. Obesity or overweight is one of the important factors of the cause of Primary Hypertension and failure in maintaining ideal weight, which can be managed by the applicant by regular exercise and restricting diet, is one of the important cause of Primary Hypertension. Ld. Counsel for the respondents further submitted that the applicant was not overweight at the time of enrolment but he gradually gained weight and by the time of onset of first and second disabilities applicant was overweight by more than 27% from ideal weight. The mere fact that a

first and second diseases have manifested during military service do not per se establish attributability to or aggravation by military service.

6. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents. We have also gone through the Release Medical Board proceedings as well as the records and we find that the questions which need to be answered is whether the disabilities of the applicant are attributable to or aggravated by Military Service?

7. After having heard the submissions of learned counsel of both sides we found that there are certain facts admitted to both the parties, i.e., applicant was enrolled in the army on 30.06.1997 and discharged from service on 30.06.2021, he sustained injury while on leave while he was going to Regimental Wet Canteen to purchase items and which resulted into third disability and his composite disability were assessed at 46.8% for life, the disability claim of the applicant was rejected.

8. In the RMB proceedings of the applicant, the first and third disabilities of the applicant i.e. '**OBESITY (E 66.0)**' and '**PRIMARY HYPERTENSION (I 10.0)**' are opined as NANA by the RMB on the ground that first disability is a life style disease and onset of second disability was in peace area. At the time of discharge from service, we find that applicant's ideal weight was 74.7 Kg whereas the actual weight was 95 Kg, over weight is 20.3 Kg, which is 27.17% excess than the ideal weight. The onset of first and second disabilities was in August, 2019. The study of a national and international reports and

molecular sciences reveal that obesity and excessive weight gain is identified as the most important and significant risk factor in the development and progression of Type 2 Diabetes Mellitus in all age group and obesity and overweight significantly influence the risk of Hypertension. We are of the view that overweight plays a vital role in disabilities like Hypertension and Diabetes etc. which are a serious health condition that entails a higher risk of cardio-vascular diseases.

9. Further, the applicant should have reduced his weight to overcome the problem by restricting the diet and required exercise which has not been done by him, therefore, organization cannot be held liable for the own actions of the applicant. There is no denial from the fact that if the claimant is himself not controlling the factors of disabilities which are well within his voluntary control, he cannot be allowed to garner benefit of such beneficial schemes and provisions. We do not find any substance in the submission of the Ld. Counsel for the applicant that the first and second disabilities of '**OBESITY (E 66.0)**' and '**PRIMARY HYPERTENSION (I 10.0)**' have causal connection with the military service. As such the applicant's first and second disabilities are held as NANA.

10. Further, the respondents have denied disability element of disability pension to the applicant for the third disability on the reason that for getting disability pension, in respect of injury sustained during the course of employment, there must be some causal connection between the disability and military service, and this being lacking in

applicant's case, as there was no causal connection between the disability and military service, he is not entitled for the same.

11. This question has been considered time and again not only by the various Benches of AFT but by the Hon'ble High Courts and the Hon'ble Apex Court. In a more or less similar matter, **Secretary, Govt of India & Others Vs. Dharamveer Singh**, decided on 20 September 2019, in Civil Appeal No 4981 of 2012, the facts of the case were that respondent of that case met with an accident during the leave period, while riding a scooter and suffered head injury with '**Faciomaxillary and Compound Fracture 1/3 Femur (LT)**'. A Court of enquiry was conducted in that matter to investigate into the circumstances under which the respondent sustained injuries. The Brigade Commander gave Report, dated August 18, 1999 to the effect that injuries, occurred in peace area, were attributable to military service. One of the findings of the report recorded under Column 3 (c) was that "No one was to be blamed for the accident. In fact respondent lost control of his own scooter". In this case the respondent was discharged from service after rendering pensionable service of 17 years and 225 days. In pursuance to report of the Medical Board dated November 29, 1999, which held his disability to be 30%, the claim for disability pension was rejected by the Medical Board on the ground that the disability was neither attributable to nor aggravated by military service. An appeal filed by the respondent against the rejection of his claim for the disability pension was rejected by the Additional Directorate General, Personnel Services. Respondent then filed an

O.A. in Armed Forces Tribunal against the order of denial of disability pension which after relying upon the judgment of Hon'ble Apex Court in the case of ***Madan Singh Shekhawat v. Union of India & Ors***, (1999) 6 SSC 459 was allowed by the Tribunal holding that respondent was entitled to disability pension. Aggrieved by the same, this Civil Appeal was filed in which the Hon'ble Apex Court framed following 3 points for consideration:-

- (a) Whether, when Armed Forces Personnel proceeds on casual leave or annual leave or leave of any kind, he is to be treated on duty?.
- (b) Whether the injury or death caused if any, the armed forces personnel is on duty, has to have some causal connection with military service so as to hold that such injury or death is either attributable to or aggravated by military service?.
- (c) What is the effect and purpose of Court of Inquiry into an injury suffered by armed forces personnel?.

12. The Hon'ble Apex Court decided the question number 1 in affirmative holding that when armed forces personnel is availing casual leave or annual leave, is to be treated on duty.

13. While deciding the second question the Hon'ble Apex Court in para 20 of the judgment held as under:-

“ In view of Regulations 423 clauses (a) , (b), there has to be causal connection between the injury or

death caused by the military service. The determining factor is a causal connection between the accident and the military duties. The injury be connected with military service howsoever remote it may be. The injury or death must be connected with military service. The injury or death must be intervention of armed forces service and not an accident which could be attributed to risk common to human being. When a person is going on a scooter to purchase house hold articles, such activity, even remotely, has no causal connection with the military service”.

14. Regarding question number 3, the Hon’ble Apex Court held that if a causal connection has not been found between the disabilities and military service, applicant would not be entitled to the disability pension. While deciding this issue, the Hon’ble Apex Court has discussed several cases decided by itself as well as the various Benches of the Armed Forces Tribunal and the High Courts and has held that when armed forces personnel suffers injury while returning from or going to leave, it shall be treated to have causal connection with military service and, for such injury, resulting in disability, the injury would be considered attributable to or aggravated by military service.

15. The Hon'ble Apex Court while summing up took note of following guiding factors by the Armed Forces Tribunal, Regional Bench, Chandigarh, in the case of **Jagtar Singh v. Union of India & Ors**, Decided on November 02, 2020 in TA No 61 of 2010 approved in the case of **Sukhwant Singh** and **Vijay Kumar** case, and held that they do not warrant any modification and the claim of disability pension is required to be dealt with accordingly. Those guiding factors are reproduced below for reference:-

“(a) The mere fact of a person being on 'duty' or otherwise, at the place of posting or on leave, is not the sole criteria for deciding attributability of disability/death. There has to be a relevant and reasonable causal connection, howsoever remote, between the incident resulting in such disability/death and military service for it to be attributable. This conditionality applies even when a person is posted and present in his unit. It should similarly apply when he is on leave; notwithstanding both being considered as 'duty'.

(b) If the injury suffered by the member of the Armed Force is the result of an act alien to the sphere of military service or in no way be connected to his being on duty as understood in the sense contemplated by Rule 12 of the Entitlement Rules 1982, it would not be legislative intention or nor to our mind would be permissible approach to generalise the statement that every injury suffered during such period of leave would necessarily be attributable.

(c) The act, omission or commission which results in injury to the member of the force and consequent disability or fatality must relate to military service in some manner or the other, in other words, the act must flow as a matter of necessity from military service.

(d) A person doing some act at home, which even remotely does not fall within the scope of his duties and functions as a Member of Force, nor is remotely connected with the functions of military service, cannot be termed as injury or disability attributable to military service. An accident or injury suffered by a member of the Armed Force must have some casual connection with military service and at least should arise from such activity of the member of the force as he is expected to maintain or do in his day-to-day life as a member of the force.

(e) The hazards of Army service cannot be stretched to the extent of unlawful and entirely un-connected acts or omissions on the part of the member of the force even when he is on leave. A fine line of distinction has to be drawn between the matters connected, aggravated or attributable to military service, and the matter entirely alien to such service. What falls ex-facie in the domain of an entirely private act cannot be treated as legitimate basis for claiming the relief under these provisions. At best, the member of the force can claim disability pension if he suffers disability from an injury while on casual leave even if it arises from some negligence or misconduct on the part of the member of the force, so far it has some connection and nexus to the nature of the force. At least remote attributability to service would be the condition precedent to claim under Rules 173. The act of omission and commission on the part of the member of the force must satisfy the test of prudence, reasonableness and expected standards of behavior”.

(f) The disability should not be the result of an accident which could be attributed to risk common to human existence in modern conditions in India, unless such risk is enhanced in kind or degree by nature, conditions, obligations or incidents of military service.”

16. We have considered the applicant's case with regard to third disability in view of above guiding factors and we find that applicant was on Leave and due to slip in the drain while going to Regimental Wet Canteen sustained injury resulting into third disability. The activity in which he sustained injury being not connected with his military duties in any manner, he is not entitled to the disability element of disability pension for the third disability.

17. In the result, we hold that the claim of applicant's disability element of disability pension has rightly been rejected by the

respondents which needs no interference. Resultantly, **Original Application No. 91 of 2024** is **dismissed**.

18. No order as to cost.

(Maj. Gen. Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 10 March, 2025

AKD/-